



POLICE DEPARTMENT

The
City
of
New York

In the Matter of the Disciplinary Proceedings

-x-

- against - : FINAL

Police Officer Richard Melendez : ORDER

Tax Registry No. 917988 : OF

Military and Extended Leave Desk : DISMISSAL

-x-

Police Officer Richard Melendez, Tax Registry No. 917988, Shield No. 02025, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2017-17073, as set forth on form P.D. 468-121, dated November 13, 2017, and after a review of the entire record, Respondent is found Guilty of Specification Nos. 1 and 2. Respondent is found Not Guilty of Specification No. 3.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Richard Melendez from the Police Service of the City of New York.

A handwritten signature in blue ink that reads "James P. O'Neill".
JAMES P. O'NEILL
POLICE COMMISSIONER

EFFECTIVE:

COURTESY • PROFESSIONALISM • RESPECT



POLICE DEPARTMENT

January 18, 2018

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In the Matter of the Charges and Specifications : Case No.
- against - : 2017-17073
Police Officer Richard Melendez :
Tax Registry No. 917988 :
Military and Extended Leave Desk :
-----X-----

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Joshua Kleiman, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

Charges and Specifications:

1. Said Police Officer Richard Melendez, while off-duty and assigned to the 10th Precinct, in or about July 2016, in [REDACTED] engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Melendez subjected a child less than seventeen years of age to sexual contact.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT

2. Said Police Officer Richard Melendez, while off-duty and assigned to the 10th Precinct, in or about July 2016, in [REDACTED] engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Melendez did endanger the welfare of a child less than seventeen years of age by subjecting her to sexual contact.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

3. Said Police Officer Richard Melendez, while assigned to the 10th Precinct, on or about and between July 2016 and February 21, 2017, upon being informed of an allegation that he had subjected a child less than seventeen years of age to sexual contact, failed to immediately report said allegation to the Department and request a supervising officer to respond. (*As Amended*)

P.G. 207-21, Pages 1-2 & Additional Data - ALLEGATIONS OF CORRUPTION AND OTHER MISCONDUCT AGAINST MEMBERS OF THE SERVICE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 13 and 14, and December 12, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Investigator Christopher Sargente of the [REDACTED] [REDACTED] Child Abuse Investigations Unit, Senior Investigator Nancy Stack, Jenna Maisto, Brianna Vreeland, and Person B. Respondent called Lieutenant Kenneth Scianna of IAB as a witness, and Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent guilty of Specifications 1 and 2, for subjecting Person A

to sexual contact, but not guilty of Specification 3, for failing to immediately report an allegation to the Department.

FINDINGS AND ANALYSIS

This case involves an allegation that Respondent sexually touched Person A, hereinafter referred to as "Person A", in July, 2016. The incident publicly came to light when in February, 2017, as part of a small group discussion at a religious retreat, Person A said that she had been sexually abused. Person A confirmed the accusation to two camp counselors, and the authorities were notified the next day. Investigators from [REDACTED] took statements from Person A and Person B, regarding the incident, and arrested Respondent. However, Person A subsequently recanted to the District Attorney's Office, and the criminal case against Respondent was [REDACTED]

Person A did not appear to testify at this hearing, but [REDACTED] hearsay accounts to various people were admitted into evidence. Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235 (1st Dept. 1991); *In the Matter of 125 Bar Corp v. State Liquor Authority of the State of New York*, 24 N.Y.2d 174 (1969). To be sure, it is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the witness. Although Person A did not testify, this tribunal did have the benefit of hearing from several live witnesses who repeated what Person A had told them, and each of those witnesses was subjected to cross-examination.

Jenna Maisto, age 25, testified that in February, 2017, she was a counselor and mentor at the Rock Mountain Bible Camp youth retreat in Pennsylvania. On February 19 she was facilitating a group discussion of five girls, where they were given the opportunity to confess

things that were troubling them and lay their burdens on Jesus. During the discussion, after a couple of other campers had spoken, Person A stated that [REDACTED] was raped by [REDACTED] though [REDACTED] did not specify by whom. [REDACTED] said that it wasn't the person's fault – he was tired and mistook [REDACTED] for Person B – and so Person A forgave him. Person B was aware of what had occurred. Person A also mentioned that [REDACTED] was addicted to pornography. (Tr. 149-151, 164-167)

According to Maisto, she approached Person A after the group discussion and asked [REDACTED] privately for additional information. At no point did Maisto tell Person A that this information would be passed on to the authorities. Person A said that it was Respondent who had sexually abused [REDACTED] and that the incident occurred on July 21, 2016. (Tr. 151-152, 165) Later that evening, Person A, Maisto, and another counselor, Brianna Vreeland, discussed the incident in greater detail. Person A said that around four or five a.m., she was playing video games when Respondent stopped by [REDACTED] and asked [REDACTED] to come say goodnight. Person A went to [REDACTED]' bedroom and laid in [REDACTED] bed, as [REDACTED] often did. While on [REDACTED] stomach, Respondent massaged Person A's back, but then touched [REDACTED] between [REDACTED] legs and calves, on top of [REDACTED] clothes and then underneath, around her [REDACTED] area. Person A told Maisto and Vreeland that Respondent "fingered" [REDACTED]. Person A was uncomfortable and flipped over onto [REDACTED] back. Respondent tried to turn [REDACTED] back over, but [REDACTED] was able to get up and leave the room. Respondent came to [REDACTED] room and asked if everything was okay; Person A told him [REDACTED] was fine, just tired. Afterward, Person A told Person B what had occurred, and Person B said that she, too, was molested as a child. Person A later informed [REDACTED] therapist what had happened, and the therapist told [REDACTED] that it was an accident and that [REDACTED] needed to forgive Respondent, which [REDACTED] did. (Tr. 153-156, 170-172)

Maisto and Vreeland wrote down what Person A had told them, and passed the information on to the pastors, who indicated that they would contact Child Protective Services ("CPS") in the

morning. Maisto was later interviewed by Investigator Christopher Sargente, and signed a written statement summarizing what Person A had said. (Tr. 156-157, 162)

Brianna Marie Vreeland, age 23, testified that at the time of the retreat, she already knew Person A from the church for about a year. Vreeland observed that Person A did not seem to be fitting in with the other campers at the retreat, and that she was mostly keeping to [REDACTED] After the group meetings on Sunday, Person A approached Vreeland and asked to speak with her and Maisto. Person A then informed them, in detail, what had transpired with Respondent on July 21, 2016; Vreeland's testimony of Person A's account was essentially the same as that provided by Maisto in her testimony, including how Respondent had slipped his hand into Person A's underwear and "fingered" [REDACTED]. Later, Person A told Person B what occurred, and Person B said it was an accident and that Person A should forgive him. Person B also said that she understood what it was like, since something similar happened to her. Person A also told [REDACTED] therapist the details of what transpired, and the therapist similarly told [REDACTED] that [REDACTED] needed to forgive Respondent and move on. (Tr. 185-187, 190-192)

Like Maisto, Vreeland met with an investigator, repeated what Person A had said, and signed a written statement to that effect. (Tr. 188-189)

Investigator Christopher Sargente, from the Child Abuse Investigation Unit ("CAIU") in [REDACTED] testified that on February 21, 2017, his office received a report of an alleged sexual abuse of a [REDACTED] by Respondent. The report came from a religious figure in charge of a retreat. Investigator Sargente, partnered with a senior CPS case worker, began his investigation the same day by having Person A and Person B come to the CAIU office for interviews. [REDACTED]

[REDACTED] (Tr. 33-36, 74-75) The CPS worker discussed with Person B the need to have a safety plan in place [REDACTED] (Tr. 79-80)

According to Investigator Sargente, Person A stated that in the summer of 2016, [REDACTED] in [REDACTED] Respondent touched [REDACTED] "private parts." The investigator had Person A identify on a diagram the area where [REDACTED] was touched, and [REDACTED] indicated her [REDACTED] (Dept. Ex. 1). Person A described the incident in greater detail, essentially consistent with what she had told the counselors at the retreat. Investigator Sargente prepared a written supporting deposition reflecting Person A's statement, which she reviewed and signed (Dept. Ex. 2). The statement describes how Person A got into [REDACTED] bed while Person B was asleep. As Person A was lying on her stomach, Respondent massaged [REDACTED] back, calves, and thighs. He then slid his hand under [REDACTED] panties and started "rubbing [REDACTED] private part" with one finger. Person A stated that Respondent put his finger inside of [REDACTED]. Person A flipped onto [REDACTED] back to get him to stop, Respondent tried to push [REDACTED] back onto [REDACTED] stomach, but Person A was able to get up and leave the room. About 10 minutes later, Respondent came [REDACTED] to ask if [REDACTED] was okay. After Respondent left [REDACTED], Person A told Person B what had occurred. (Dept. Ex. 2, Tr. 37-43, 75)

Investigator Sargente also interviewed Person B, who appeared to be upset and emotional. She claimed to be "totally shocked" by the accusation, insisted she did not see or hear anything happen on the day of the incident, and stated that she had not even heard anything about this allegation until now. (Tr. 44-45, 77, 84) While Person B was at the CAIU office, she agreed to place a controlled telephone call to Respondent. A recording of that call, along with the accompanying transcript, were admitted into evidence (Dept. Exs. 3A and 3B). In that call, a distraught Person B pleads with Respondent to explain what exactly happened with Person A. Respondent replies that they've already talked about it and that she knows what happened, but he provides no details and makes no admissions.

On March 17, 2017, Investigator Sargente interviewed Michelle [REDACTED] the therapist for Person A and Person B, though he did not take a sworn written statement from her. [REDACTED] denied

that Person A had told her anything about being the victim of sexual abuse. [REDACTED] told the investigator that all Person A had described was how Respondent had touched [REDACTED] arm and back in a caressing manner that made [REDACTED] uncomfortable. The therapist said that she assisted Person B and Person A in devising a safety plan so that it wouldn't happen again. (Tr. 55-56, 89-91, 94, 96-98) Investigator Sargente also confirmed that on March 29, 2017, he separately interviewed the two counselors from the retreat, whose statements were consistent with what Person A had disclosed to him. (Tr. 56, 59, 66)

Investigator Sargente [REDACTED]

[REDACTED] Person A recanted her accusation to the district attorney's office. Person A told the assigned prosecutor that there was no sexual contact, and that [REDACTED] never even made the statements contained in [REDACTED] signed supporting deposition. (Tr. 67-69, 107, 112, 115)

Senior Investigator Nancy Stack testified that she supervised Investigator Sargente, and also assisted in the investigation on February 21. She confirmed with Person A how Respondent had molested [REDACTED] by placing his hand inside [REDACTED] underwear and rubbing [REDACTED] vagina. Investigator Stack monitored the controlled phone call, during which Person B, who was crying, said she thought she was going to have a panic attack. After the call, Investigator Sargente went out to locate Respondent, while Investigator Stack remained at the office and interviewed Person B. Person B was no longer crying, though she clearly wasn't happy and was nervous. (Tr. 119-124, 132-133, 137)

According to Investigator Stack, Person B admitted to her that because she was scared, she had lied to Investigator Sargente earlier when she claimed she knew nothing about what had occurred. Person B stated that during the night of the incident, she remembered hearing Respondent ask Person A if she was ok, though Person B did not see anything happen. She confirmed that the morning after, Person A told her that Respondent had touched [REDACTED] vagina by

pointing to it. Person B then called Respondent home from work, and he admitted that he had inappropriately touched Person A; Respondent told her he was sorry, and claimed that he thought it was Person B who he was touching. Respondent later apologized to Person A as well, and gave [REDACTED] the same explanation. Also, Person B told Investigator Stack that she had discussed what transpired with the therapist, and they had arranged for Person A to stay out of their bedroom to prevent a repeat occurrence. There were plans in place for Respondent to retire soon, and the family was going to be moving. (Tr. 1 25-127)

After the interview, Investigator Stack wrote down Person B's statement, checking with Person B as she wrote each sentence to make sure it was accurate. Person B reviewed and signed the written deposition (Dept. Ex. 4), which essentially mirrors her oral statement to Investigator Stack. Specifically, the statement indicates that the morning after the incident, Person A told her that Respondent had "touched [REDACTED] inappropriately." Person B, herself, was sleeping in the bed at the time this occurred, but there was one point during the night where she awoke and heard Respondent go to Person A bedroom and ask if she was okay. When Person A told her that morning what happened, Person B called Respondent home and confronted him. Respondent apologized, saying it was an accident and that "he thought it was (Person B) he was touching." Later that day, Respondent apologized to Person A as well. (Dept. Ex. 4, Tr. 127-131) Like Person A, Person B later recanted to the district attorney's office, claiming that her written deposition was coerced. (Tr. 139)

Person B testified that [REDACTED] and that they

[REDACTED] including Person A. Person B stated that she had [REDACTED] in October of 2016, and now has some [REDACTED] stemming from that illness for which she takes medication. She also takes medication for [REDACTED]. She stated that as a child [REDACTED] that experience. According to Person B,

Person A sometimes slept in their bed [REDACTED] (Tr. 195- 196, 1
99-200, 203-204)

Regarding this incident, Person B maintained that she does not believe the accusation to be true. She testified that one morning in July of 2016, Person A woke her to say that Respondent had touched [REDACTED] shoulder, the side of [REDACTED] arm, and the side of [REDACTED] leg, which made [REDACTED] uncomfortable; there was no mention of any sexual contact. Because of Person A's [REDACTED] Person B called and asked Respondent, who was on his way to work, to come home to discuss the matter, which he did. Respondent then went to work, while Person B and Person A went out to eat. Person B did not tell their therapist, [REDACTED] about the incident since it was "just a family thing" and not a big deal. (Tr. 201-202, 206-211)

According to Person B, when she and Person A went to the CAIU office on February 21, they were sitting there for hours. It was a "terrible experience" and she was confused by what was happening. They were harsh with Person B, and the CPS worker threatened to have her kids taken away and placed in foster care if she didn't agree with the story the authorities were telling. When asked about the specifics of the written statement with her signature, Person B testified that most of the details attributed to her were false. (Tr. 213-217)

Person B testified that Person A has [REDACTED] including some [REDACTED]. She writes dark fiction, including stories about murder, dismemberment, and homosexual pornography. Person A told Person B that during the group discussion at the retreat, Person A saw an opportunity to conduct a "social experiment" regarding one of her writings. She stated that Person A did not appear to testify at this hearing because [REDACTED] continues to suffer from [REDACTED] exacerbated by [REDACTED] experience dealing with the district attorney's office in connection with this matter. (Tr. 203-204, 220-221, 223-224)

Lieutenant Kenneth Scianna from IAB testified that he was assigned this case in February of 2017, and that charges and specifications were issued even though IAB had not spoken with the complainant, Person B, or the therapist. IAB essentially relied upon the investigation done by the CAIU, and "mimicked" the [REDACTED] (Tr. 253-254, 262, 265, 268-270)

Counsel for Respondent intended to call [REDACTED] as a witness, but she chose not to testify. A copy of her progress report for her December 7, 2016 session with Person A was introduced into evidence (Resp. Ex. A). In that report, the doctor indicates that Person A informed her of an awkward incident in the summer of 2016, where Respondent touched [REDACTED] arm and back while [REDACTED] was in [REDACTED] bed. There is no mention of Person A having said anything about a sexual touching. Moving forward, Person A and [REDACTED] parents agreed that Person A would stay in her own bed at night.

Respondent testified that on the morning after the incident, he was called home from work by Person B because they needed to discuss something that had happened the night before with Person A. When he arrived home, Person B told him what Person A had said to her: that Person A came into their bed while they were sleeping the night before, and that Respondent turned over and touched [REDACTED] arm, side, and leg. Respondent explained to Person B that he was sleeping and it must have been an accident. Respondent testified that he did recall standing in the hallway and asking Person A if she was okay, though he claimed he did so because she was up so early for a child. According to Respondent, Person A suffered from [REDACTED] which sometimes caused [REDACTED] to cry, breakdown, and stop functioning. (Tr. 297-298, 304 306)

When Person B and the children were told to come to the Child Protective Services office on February 21, Respondent and Person B initially thought it was to discuss an issue regarding their heating situation; the family had missed a heating payment, and figured that one of the kids may have complained in school about a lack of heat at home. However, an upset Person B called

Respondent from the office, and informed him that they were accusing him of touching Person A in [REDACTED] private area. Respondent assumed they were referring to the incident of July, 2016 when he accidentally had touched [REDACTED] arm, side, and leg, and reminded Person B that he already had told her everything. Person B was crying, and Respondent apologized that he could not be there with her. Respondent acknowledged that he realized the accusation was serious, but he did not immediately notify IAB. (Tr. 299-301, 309-313)

[REDACTED]

[REDACTED]

[REDACTED]

Respondent testified that he never sexually abused Person A, and that the accusation was a lie. (Tr. 301- 303, 313, 316)

Specifications 1 and 2 allege that Respondent subjected Person A to sexual contact, thereby endangering [REDACTED] welfare. Although Person A did not appear to testify, there was credible and convincing testimony from several unbiased witnesses who repeated what Person A had said to them. Maisto and Vreeland, the two camp counselors, were detailed and consistent as they recounted what Person A had stated during the retreat. Similarly, Investigator Sargente and Senior Investigator Stack provided persuasive testimony regarding Person A's accusation against Respondent. Each of the investigators came across as professional and sincere in their descriptions of what occurred at the CAIU office, and there was no indication that they had a motive to fabricate their testimony.

Regarding the statements at the retreat, each of the counselors were extremely credible in their testimony, and neither had any motive to falsify their account. Counsel for Respondent suggests that Person A fabricated [REDACTED] story at the camp. In support of that argument, counsel points primarily to Person A's recantation to the District Attorney's Office and the subsequent [REDACTED]. He also

refers to the testimony regarding how Person A was somewhat removed from the other campers, and contends that [REDACTED] only told the story about Respondent in an effort to get attention and fit in. There was additional testimony about Person A's active imagination, and a claim that what she said at the retreat was part of a "social experiment" rather than the truth. That scenario would have been more plausible if the only time Person A made those statements was at the retreat. However, Person B's signed deposition confirms that on the morning of the incident itself, Person A told her that [REDACTED] was sexually touched by Respondent. Additionally, Person A corroborated [REDACTED] account to the counselors by making essentially identical statements to Investigators Sargente and Stack at the CAIU office two days later. Not only did Person A make consistent oral statements about what occurred, [REDACTED] also read and signed a typed summary of [REDACTED] statement in which [REDACTED] again described how Respondent placed his finger inside [REDACTED] vagina.

Counsel for Respondent argues that Person A's written statement at the office (Dept. Ex. 2) was obtained under pressure from the investigators. However, there is much about that written statement that has the ring of truth to it. Person A begins the statement by stating that what happened was an "honest mistake," and [REDACTED] forgives Respondent. If the statement at camp really was just part of some social experiment, then one would have expected Person A to clear up that mistake at the CAIU office, at a time where, in [REDACTED] own words, [REDACTED] was sympathetic to Respondent. Instead, [REDACTED] goes on to provide a detailed account of what transpired that is consistent with what [REDACTED] had told the counselors, describing step-by-step how Respondent placed his finger inside [REDACTED] vagina.

Moreover, Person A goes so far as to correct some of the details of what occurred by crossing out a portion of the typed statement and writing in a more accurate description of how Respondent tried to nudge [REDACTED] back onto [REDACTED] stomach. As such, I reject the claims that the investigators either fabricated the statement attributed to Person A or that they obtained [REDACTED] signature through

threats. Both investigators persuasively recounted how Person A voluntarily made statements implicating Respondent, and I credit their testimony.

Person B provided some additional corroboration that Person A's original account was, in fact, true. On the one hand, counsel for Respondent is correct that much of her testimony was more supportive of Respondent's position: Person B testified that Person A never said that Respondent had touched [REDACTED] sexually, and insisted that any statements made at the CAIU office to the contrary were obtained under the threat of [REDACTED]. After listening to the controlled phone call, it is apparent that Person B was, indeed, experiencing a great deal of anxiety during her six-hour stay at the office.

However, the fact that Person B was upset at the office does not negate the truthfulness of the statement she made to Senior Investigator Stack, which was memorialized in writing and signed by Person B (Dept. Ex. 4). To be sure, Person B was in a difficult situation, having to deal with the competing interests of looking out for Person A's well-being, while also taking into account the potential ramifications for Respondent and the entire family if the accusations were proven to be true. After initially telling Investigator Sargente that this was the first she was hearing about any accusations of a sexual nature, Person B admitted to Investigator Stack that she had lied earlier, and that Person A *had* told her that Respondent had touched [REDACTED] vagina. This admission was included in the written deposition signed by Person B. Although Person B did not see the touching occur, she acknowledged that she had heard Respondent go to Person A bedroom and ask if she was okay. When Person A informed her in the morning what had happened, Person B summoned Respondent home and confronted him; the urgency in calling Respondent home right away is more consistent with the need to deal with a serious allegation of sexual touching, as opposed to a mere touching on the side of the arm and leg. Person B's statements to Senior Investigator Stack, both her oral account and the signed written deposition, were detailed,

logical, and consistent with Person A's accounts, and I credit the senior investigator's testimony that Person B did, in fact, make these statements at the office, notwithstanding Person B's subsequent recantation to the District Attorney.

In addition to Person A's outcry to Person B, there also was evidence that Person A informed [REDACTED] therapist, [REDACTED] about the sexual touching, but that evidence was less convincing. When questioned by Investigator Sargente, [REDACTED] denied Person A ever said that to her. Counsel for Respondent attempted to call [REDACTED] as a witness, but she chose not to appear. Even so, the doctor's progress note makes no mention of a sexual touching, stating only that Respondent "touched [REDACTED] arm and back."

Respondent testified on his own behalf, but his testimony was unconvincing. When confronted with this egregious accusation on the witness stand, Respondent did not come across as genuine or sincere as he denied consciously touching Person A sexually or otherwise that night. His self-serving claim that he was sleeping, and that whatever occurred must have been an accident, was unconvincing when contrasted with the detailed, consistent statements from Person A, as well as Person B's signed deposition from the CAIU office. Additionally, Respondent confirmed that he did, indeed, check to see if Person A was okay.

Respondent's testimony about the controlled phone call was similarly unconvincing. He testified that he initially thought Person B was summoned to the office because one of the kids may have complained about a lack of heat in their home. However, during the controlled phone call he seems to grasp pretty quickly the true nature of what is being discussed. Person B begins the call by stating that Person A said he touched [REDACTED] last summer in [REDACTED] private area. Rather than challenge the accuracy of that accusation, Respondent replies, "Person B, listen, you know everything. I didn't hide anything from you." Respondent's reaction is inconsistent with his claim that he was hearing this sexual accusation for the first time; rather, it makes clear that he

was aware of this accusation from the start. When Person B presses him to be more forthcoming, Respondent repeatedly claims that the connection is bad and he can't hear what she is saying. Even without a direct admission of wrongdoing, nothing from the controlled phone call undercuts the evidence of Respondent's guilt; if anything, it reinforces the validity of Person A's original accusation, including how █ told Person B about the sexual abuse immediately after the incident, and how Respondent was confronted with that accusation the same day.

Taken together, the evidence has established that Respondent subjected Person A to sexual contact, as Person A initially alleged. After Person A fled the room, Respondent went to check to see if █ was okay, a logical follow-up to what Person A described just happened in the bedroom. The same morning, Person A told Person B precisely what had occurred, a prompt outcry. At the camp retreat seven months later, Person A mentioned what had happened as part of a small group discussion, then elaborated on the details of how █ was touched sexually during two conversations with █ counselors. At the CAIU office two days later, Person A told Investigators Sargente and Stack how Respondent had sexually abused █, providing a detailed, consistent account of the incident. Person A also reviewed and signed a statement to that effect. Person B, too, signed a written deposition confirming that Person A had told her she had been touched sexually.

This tribunal is mindful that the evidence in this case was presented primarily through hearsay accounts, and that the victim and Person B each recanted their initial allegations. There also was testimony that Person A suffers from anxiety and has mental health issues. However, Person A's statements accusing Respondent were detailed, consistent with the circumstances presented, and convincing. The morning of the occurrence, Person A informed Person B what had transpired. In February, Person A described to the camp counselors an incident that occurred *seven* months earlier with great specificity. Her account to investigators two days later was remarkably consistent with what she told the counselors, a strong indication of the

statements. From Respondent's reaction during the controlled phone call, it was evident that Person A had not kept silent about this incident until February, and this tribunal rejects Person B's attempt to dismiss Person A's accusation as nothing more than a "social experiment" first invented at the retreat. The record has established, by a preponderance of the credible evidence, that Respondent subjected Person A to sexual contact, thereby endangering [REDACTED] welfare, and I find Respondent guilty of Specifications 1 and 2.

Specification 3 charges Respondent with failing to immediately report the allegation of sexual contact to the Department. Section 207-21 of the Patrol Guide requires a member of service to request that a supervisor respond to the scene where there is an allegation of corruption [or misconduct] against oneself. On the one hand, Respondent acknowledged that after the controlled phone call, he appreciated the serious nature of what was being alleged. Nevertheless, Respondent was receiving limited information second hand from Person B, who was upset and crying. Events unfolded rapidly after that, as Respondent was arrested within the next two hours. Upon his release from jail he promptly notified his commanding officer. There was no indication from the evidence that by not reporting the allegation before then, Respondent in any way hindered the investigation. The record has failed to establish, by a preponderance of the credible evidence, that under these particular circumstances, Respondent committed misconduct in this regard, and I find him not guilty of Specification 3.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 18, 1996. Information from his personnel record that was considered in

making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has no formal disciplinary history.

The Advocate recommends that Respondent be dismissed from the Department. Based on the seriousness of Respondent's misconduct, and the high public trust police officers must fulfill, I agree with that recommendation. Respondent has been found guilty of extremely serious misconduct involving sexual contact with a minor. In *Disciplinary Case No.* [REDACTED]

[REDACTED] an eight-year officer with no disciplinary history was dismissed for sexually abusing and attempting to engage in sexual intercourse with his 16-year old sister-in-law. That Respondent also gave an alcoholic beverage to the minor, and displayed pornographic images to her. In *Case No.* [REDACTED], a four-year officer with no prior disciplinary record and average performance evaluations was fired for off-duty sexual contact with a 14-year-old female.

Under the totality of circumstances in this case, the same penalty is warranted here. Respondent's conduct, subjecting Person A to sexual contact, is so egregious as to warrant separation from the Department. His actions here bring discredit to the Department and undermine its ability to effectively carry out its mission. Accordingly, I recommend that Respondent be DISMISSED from the New York City Police Department.

APPROVED

FEB 01 2018

JAMES P. O'NEILL
POLICE COMMISSIONER

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER RICHARD MELENDEZ
TAX REGISTRY NO. 917988
DISCIPLINARY CASE NO. 2017-17073

Respondent was appointed to the Department on July 18, 1996. On his last three annual performance evaluations, he received a 4.0 overall rating of "Highly Competent" in 2016, 2015 and 2014.

In his twenty-one years of service, Respondent has reported sick [REDACTED]
[REDACTED]

Respondent has one medal for Excellent Police Duty, and one medal for Meritorious Police Duty.

Respondent was suspended from duty on February 22, 2017 in connection with the instant case. He was suspended with pay on March 24, 2017 which remains ongoing.

Respondent has no formal disciplinary history.

For your consideration.

A handwritten signature in black ink, appearing to read "Jeff S. Adler".

Jeff S. Adler
Assistant Deputy Commissioner Trials